A.F.R.

HIGH COURT OF CHHATTISGARH AT BILASPUR

(Division Bench)

CORAM : Hon'ble Shri Lal Chand Bhadoo, J. and
Hon'ble Shri Vijay Kumar Shrivastava, J.

Criminal Appeal No.1313 of 2000

Punaram and another

Versus

State of Madhya Pradesh

JUDGMENT FOR CONSIDERATION

Sd/-
V.K.Shrivastava
Judge

20.12.2005

HON'BLE SHRI JUSTICE LAL CHAND BHADOO

I agree

Sd/-
L.C.BHADOO
Judge

20.12.2005

POST FOR 21-12-2005

Sd/-
JUDGE
20-12-2005

(66)

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(Division Bench)

CORAM : Hon'ble Shri Lal Chand Bhadoo, J. and
Hon'ble Shri Vijay Kumar Shrivastava, J.

Criminal Appeal No.1313 of 2000

Appellants (In Jail) : 1. **Punaram Satnami,** S/o Vishumbhas Satnami, Aged about 26 years

2. **Nanhoo Satnami,** S/o Vishumbhas Satnami, Aged about 22 years

Both R/o Village Darmu, P.S. Baloda Bazar, Distt. Raipur

Versus

Respondent : **State of Madhya Pradesh,** Through Police Station Baloda Bazar, District Raipur, M.P.

Mr. Abhay Tiwari, counsel for the appellants.
Mr. U.N.S.Deo, Additional Public Prosecutor with Mr. Akhil Mishra, Panel Lawyer for the respondent/State.

J U D G M E N T

(Delivered on 21-12- 2005)

Per Vijay Kumar Shrivastava, J.

This appeal has been directed against the judgment of conviction and order of sentence dated 15-4-2000 passed by IInd

Additional Sessions Judge, Baloda Bazar in Sessions Trial No.380/1999, whereby both the appellants have been held guilty for committing murder of Ganeshram Satnami punishable under Section 302 read with Section 34 of the Indian Penal Code and each of them have been sentenced to undergo imprisonment for life and to pay a fine of Rs.1,000/-, in default of payment of fine, to undergo further S.I. for 6 months.

2. Facts material for disposal of this appeal in brief compass are that, on 11-8-1999, Narayan, who is son of deceased Ganeshram bought 1 bottle of liquor priced Rs.20/- on credit from appellant Punaram and assured him to pay the amount on next day. On next day i.e. 12-8-1999, in the evening at about 4 O'clock, appellant Punaram demanded his money from Narayan who avoided to pay the amount and further assured to pay within 2 or 3 days. Punaram did not agree to it, slapping Narayan took him towards his house and thereafter abusing him left the place. Narayan came to his house and apprised the facts to his father and mother. His father Ganeshram, along with his mother Samrautinbai went to the house of appellant Punaram and raised objection for beating by Punaram to their son. Appellant Punaram and his brother Nanhoo brought clubs and started attacking Ganesh by clubs. They gave several blows by clubs on the head and on other parts of the body of Ganesh. On being intervened by Narayan and Samrautinbai, they were also assaulted by both the appellants. Thereafter, Pitamber, younger brother of the deceased came there and rescued the deceased Ganesh, thereafter, both the appellants left the scene of occurrence. Ganesh fell down and became unconscious. He was taken to his house. Sarpanch and Kotwar were apprised with the

facts. In the early morning at about 3 A.M. on 13-8-1999, Ganesh succumbed to injuries attributed by the appellants.

3. Narayanlal went to the Police Station, Baloda Bazar. On his report, merg intimation was recorded as also offence under Section 302/34 of the Indian Penal Code was registered. Panchanama of the dead body was prepared and dead body was forwarded to Medical Officer for autopsy. Narayan and Samrautinbai, who received injuries in the incident, were also referred for medical examination. Dr.R.S.Tiwari examined Narayan and Samrautinbai and found injuries on their body, sent his medical report to Police Station. On examination, Medical Officer R.S.Tiwari found 9 external injuries on the body of Ganeshram. He also examined the body exploring the skull of deceased and gave his opinion that the deceased died as a result of coma caused by injury No.1 over the skull. During the investigation, appellants' clothes, full pants and shirts, were seized from the appellants, map was prepared. From the spot, controlled earth and blood stained earth were seized. On memorandum of both the appellants, clubs from each of the appellants were seized. Both the clubs were sent to Medical Officer R.S.Tiwari, who after examining the clubs, opined that, injuries found on the body of deceased could have been caused by these clubs. Statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure. On chemical examination, blood stain was found on blood stained earth, both the clubs and clothes of both the appellants. After investigation, a charge-sheet was led in the Court of Additional Chief Judicial Magistrate, Baloda Bazar, who committed the case to the Court of Session for trial.

4. Charge under Section 302 read with Section 34 of the Indian Penal Code was framed against each of the appellants, read over and explained to them. Both the appellants abjured the guilt, they took defence that they have been falsely implicated. The appellant Nanhoo further took a defence of alibi.

5. Learned IInd Additional Sessions Judge, after due appreciation of the evidence, held both the appellants guilty for committing murder of Ganeshram punishable under Section 302 read with Section 34 of the Indian Penal Code and, therefore, convicted and sentenced both the appellants accordingly.

6. Both the parties are heard. Record of trial Court perused.

7. From the evidence of Dr. R.S.Tiwari, P.W.-13 and his autopsy report dated 13-8-1999 i.e. Ex.P-26 proved by him, it is established that following external injuries on the body of Ganeshram were found : -

(1) Lacerated wound right side head temporo-frontal bone region almost vertical about 3 cm behind hair line and running backwards. 6 cm x 1½ x ½ cm bone deep, underlying bone appeared fractured. Blood over and around wound. Staining present, redness, oedema extending downwards upto ear.

(2) Lacerated wound occipital region head almost horizontal 6 cm x ½ cm x ½ cm bone deep redness mild oedema & blood staining present over & around.

(3) Lacerated would almost central vertex skull vertical 5 cm x ½ cm x ½ cm bone deep redness mild oedema & blood staining over & around wound.

(4) Abrasion left temporal region head 4 cm x ½ cm vertical redness, blood staining.

(5) Lacerated wound just behind right ear, triangular shaped 1 cm x 1 cm staining, serum blood on pressure, redness.

(6) Contusion mark right side lower part chest laterally placed 11 cm x 2¼ cm having parallel bends tapering backwards. Reddish discolouration.

(7) Contusion mark right side lower part scapula horizontally placed 11 cm x 3 cm having parallel bends, redness.

(8) Contusion mark right shoulder joint going downwards 25 cm x 3 cm reddish and oedema.

(9) Contusion mark almost parallel to injury No.8 over right upper arm 8 cm x 3 cm redness and oedema.

8. Further, from the evidence of this witness and his report, it is also established that, on internal examination, it was found that, intra dural and subcutanes wide spread blood under skin almost right side head extending downwards base and skull. Tempo-frontal bone was fractured into 3 pieces, anterior piece depressed piercing membrane, clotted blood seen coming out from brain. Sub cutanes blood seen under injuries No.6 and 7. Also found subcutanes blood under injuries No.1 to 9. All the injuries found on the body of Ganesh were anti mortem in nature and were caused by some hard and blunt object and the cause of death was coma caused by injury No.1 on skull. Therefore, it was established that, the deceased Ganesh received various injuries and succumbed to injury No.1 on his head. His death was homicidal in nature.

9. Narayan Singh, P.W.-6, Samrautinbai, P.W.-7 and Pitamber, P.W.-8 are the eye-witnesses. Samrautinbai, P.W.-7 in her evidence deposed that the appellant Punaram gave a club stroke on the head of Ganesh who receiving injury fell down. Thereafter, both the brothers i.e. both the appellants beat Ganesh. He raised alarm. Pitamber, P.W.-8 in his evidence deposed that after hearing the noise, he came out of his house and saw both the appellants who are brothers beating Ganeshram. Ganeshram received injury over his head and fell down. He made a request to the appellants, therefore, they left the deceased. Narayan, P.W.-6 in his evidence deposed that the appellant Punaram brought a club from his house and gave a club blow on the head of his father. His father Ganeshram received injuries and fell down. In cross-examination he deposed that Punaram and Nanhoo both beat his father with clubs.

10. Merg intimation, Ex.P-7 and F.I.R., Ex.P-8 have been proved by witnesses P.W.-6, Narayan Singh and P.W.-12, M.D.Naik. In both the reports, clear allegation is made that the appellants Punaram and Nanhoo brought clubs and both of them beat Ganeshram on his head and other parts of the body by clubs. Both these documents support the oral evidence of eye witnesses. Injuries found on post mortem report conducted by Dr. R.S.Tiwari, P.W.-13 described above also supports the evidence of eye-witnesses.

11. Appellant Nanhoo took a defence that on the date of incident, he was for the whole day in ground where he was playing

cricket. He also adduced witness Santosh Kumar, D.W.-1 who deposed that the incident is of next day of the Hareli Festival. On that date, they were playing cricket. Nanhoo was also playing there. They were in ground since 10 O'clock from the morning till 7 P.M. In cross-examination of P.W.-6, Narayan, it has come that Punaram went to play ground to call his brother Nanhoo who was playing cricket. Appellant Nanhoo after playing cricket brought club from his house and struck their house. Punaram and Nanhoo both came raising voice that they will kill, they will kill. Therefore, it is apparent that although Nanhoo had gone to play cricket but when incident took place at that time he was on spot with club who took part in the incident by assaulting Ganeshram with club. In cross-examination of Samrautinbai, P.W.-7 and Pitamber, P.W.-8, no such suggestion has been made that appellant Nanhoo was not on the spot and did not beat the deceased. Instead in cross-examination of Pitamber, P.W.-8, it has been brought that Punaram gave a stroke with club on the head of Ganeshram and thereafter Nanhoo also assaulted him and Nanhoo also gave a blow on the head of Ganeshram. This witness in cross-examination has very specifically deposed that Punaram and Nanhoo both were carrying clubs at the time of incident. A lengthy cross-examination has been done by the appellants but nothing emerged in the cross-examination of Narayan, P.W.-6, Samrautinbai, P.W.-7 and Pitamber, P.W.-8 so as to disbelieve their version. From their evidence, the defence taken by the appellant Nanhoo i.e. plea of alibi is not sustainable. Instead it was established that both the appellants by clubs gave several blows on the head and other parts of the body of Ganeshram, as a result of that, Ganeshram received 9 injuries on his body and succumbed to injury caused on his skull.

12. Learned counsel for the appellants contended that the deceased Ganeshram received 9 injuries and injury No.1 inflicted on his skull was the cause of death but there is no evidence to establish who is the author of this fatal injury, therefore, relying on **Radhey Shyam vs. State of U.P., reported in 1998(8) Supreme 118**, contended that both the appellants at the most can be convicted under Section 325 and not under Section 302 of the Indian Penal Code. The case law referred by learned counsel for the appellants relates to the case where accused persons have right of private defence but in exercise of private defence they exceeded and there was no evidence to show that the appellant was the person who inflicted fatal blow on the deceased. Here in the instant case, the case does not relate to right of exercise of private defence. Therefore, the case law relied on is distinguishable on facts of the instant case.

13. Hon'ble the Apex Court while delivering judgment in **State of M.P. vs. Deshraj and others, reported in 2004 Cri.L.J. 1415**, laid a law that in case of joint attack resulting in death of victim and causing injuries to others, absence of evidence connecting particular accused with particular injury cannot be made a ground for not recording conviction under Section 300 read with Section 34 of the Indian Penal Code. In the instant case, from the ocular evidence duly supported with F.I.R. and medical evidence, it is apparent that both the appellants caused 9 injuries to deceased Ganesh with clubs, 5 injuries were on his head and remaining on other parts of the body. Injury No.1 was said to be fatal and there is no evidence to establish out of these two

appellants who is the author of injury No.1 i.e. fatal. Therefore, as held by Hon'ble the Apex Court in **State of M.P. vs. Deshraj and others (supra)**, both the appellants are guilty of homicidal death of Ganesh as in furtherance of common intention both of them have caused the death of Ganesh.

14. From the evidence of Narayan, P.W.-6, Samrautinbai, P.W.-7 duly corroborated with merg intimation, Ex.P-6 and F.I.R., Ex.P-7, it is clear that the appellants due to non-payment of amount by Narayan beat him who complained to his father and mother and the father Ganesh complained the same to Punaram. It is apparent from the evidence of Narayan, P.W.-6, Samrautinbai, P.W.-7 and Pitamber, P.W.-8 that deceased was not carrying any weapon nor there has been any sudden fight. He was beaten by both the appellants only because he objected to the incident in which Punaram assaulted Narayan. There is no evidence to suggest that appellants as a result of sudden fight in a whisper of moment without pre-meditation and taking undue advantage have assaulted the deceased nor there is any evidence to show that the appellants exceeding their right of private defence assaulted and killed the deceased Ganesh. Therefore, both the appellants, who in furtherance of common intention caused the death of Ganesh, are guilty of murder punishable under Section 302 read with Section 34 of the Indian Penal Code.

15. We are of the opinion that learned trial Court properly appreciating the evidence held both the appellants guilty for committing murder of Ganeshram and rightly convicted both of

them under Section 302 read with Section 34 of the Indian Penal Code and properly punished both of them.

16. In the result, in our opinion conviction and sentence passed by the trial Court do not call for any interference. Hence the appeal is dismissed.

Sd/-
V.K.Shrivastava
Judge

Sd/-
L.C.BHADOO
Judge

[redacted]

S.Singh

[redacted]